

REMARKS

Favorable reconsideration of this application in light of the preceding amendments and the following remarks is requested.

No claims having been added and previously withdrawn claims 35-37 having previously been canceled, the Applicants submit that claims 1-34 remain pending and properly under consideration in this application. The Applicants further note that only claims 1 and 15 are currently presented in independent form.

Request for Withdrawal of Finality

The Applicants request that the designation of the pending Action as FINAL be reconsidered and withdrawn. The Applicants note that MPEP § 706.07(a) provides a second or subsequent action on the merits may be made final “*except* where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. § 1.97(c).”

The Applicants submit that in this instance 1) the Examiner has introduced a new ground of rejection based on Sun et al's article “Thermally Robust Ta-doped Ni Salicide Process Promising for sub-50nm CMOSFETS.” (“Sun”); 2) this reference was not cited

in an IDS filed under 37 C.F.R. § 1.97(c); and 3) no claims were amended in the Applicants' last response of April 27, 2007.

The Applicants contend, therefore, that the designation of this Action as FINAL was premature and contrary to the guidance of MPEP § 706.07(a). The Applicants request, therefore, that the finality of the present Action be reconsidered and withdrawn accordingly.

Rejections under 35 U.S.C. § 103

Claims 1-4, 7-9, 15-18, 21, 25-26 and 28-34 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sun. The Applicants traverse this rejection for the reasons detailed below.

The Applicants note that a reference applied under 35 U.S.C. § 103 must also qualify as "prior art" under at least one section of 35 U.S.C. § 102. The Applicants note that Sun purports to have a publication date of June 10, 2003. The Applicants further note that the present application was filed in the USPTO on December 4, 2003, and claimed priority under 35 U.S.C. § 119 from a counterpart Korean application, specifically Korean Pat. Appl. No. 10-2003-0042838, filed June 27, 2003, and that a certified copy of the priority document was subsequently filed in the USPTO.

Accordingly, Sun fails to qualify as "prior art" under any section 35 U.S.C. § 102 and cannot, therefore, support a valid rejection of the pending claims.

The Applicants request, therefore, that this rejection be reconsidered and withdrawn accordingly.

Claims 5-6, 10-14, 19-20 and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sun as applied to claims 1-4, 7-9, 15-18, 21, 25-26 and 28-34 above, and further in view of Amos et al.'s U.S. Patent No. 6,846,734 ("Amos"). The Applicants traverse this rejection for the reasons detailed below.

The Applicants incorporate the discussion above regarding the unavailability of the primary reference, Sun, as "prior art" under 35 U.S.C. § 102 and maintain that Sun cannot support a valid rejection of the pending claims.

The Applicants request, therefore, that this rejection be reconsidered and withdrawn accordingly.

Claims 22-24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sun et al.'s (Thermally Robust Ta-doped Ni Salicide Process Promising for sub-50nm CMOSFETS) as applied to claims 1-4, 7-9, 15-18, 21, 25-26 and 28-34 above, and further in view of Chittipeddi et al.'s U.S. Patent No. 6,498,080 ("Chittipeddi"). The Applicants again traverse this rejection for the reasons detailed below.

The Applicants incorporate the discussion above regarding the unavailability of the primary reference, Sun, as "prior art" under 35 U.S.C. § 102 and maintain that Sun cannot support a valid rejection of the pending claims.

The Applicants request, therefore, that this rejection be reconsidered and withdrawn accordingly.

Comments on Response to Arguments

The Applicants maintain that in order to rely on a theory of inherency, the Examiner “must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied prior art.” The Applicants submit that the Examiner has yet to identify any explicit guidance, preferred embodiments or specific examples that would *necessarily* lead one skilled in the art utilizing the Amos disclosure to a particular combination capable of producing the two-layered structure recited in claim 1. The Applicants maintain, therefore, that an anticipation rejection cannot be maintained on the teachings of this reference unless and until some *specific* teaching is identified in Amos with respect to the formation of the two-layered structure.

The Applicants maintain that simply alleging that Amos “suggests multiple embodiments one or more of which will inherently produce the claimed process,” Action at 5, does not provide any factual or logical basis for departing from the teachings of MPEP § 2131.03 that provides when “claims are directed to a narrow range, and the reference teaches a broad range,” it may be reasonable to conclude that the narrow range is not disclosed with “sufficient specificity” to constitute an anticipation of the claims. *See, e.g., Atofina v. Great Lakes Chem. Corp.*, 441 F.3d 991, 999 (Fed. Cir. 2006). Accordingly, the Applicants maintain that absent some specific factual or logical support

for concluding that Amos' disclosure is sufficient to teach the claimed range with "sufficient specificity," Amos cannot fairly be said to anticipate the pending claims.

With respect to the issue of "unexpected results," the Applicants maintain that the claimed segregation within the silicide layers is, itself, an unexpected result that is neither taught, suggested or recognized in any of the applied references. Further, as reflected in the Specification, the particular range of alloys that can achieve this result are believed to be a relatively small subset of the compositions deemed suitable for use in the fabrication methods as taught by the applied references. As noted above, the Applicants maintain that there can be no reliance on "routine experimentation" in the absence of the art's recognition of a result-effective variable.

The Applicants further maintain that none of the applied references taught or suggested the two-layer segregated silicide structure or the variables that must be controlled to achieve such a structure within the silicide. Accordingly, the Applicants contend that there is no basis for suggesting that any "routine" experimentation would have been undertaken by one of ordinary skill with any reasonable expectation of obtaining the result as to which one of ordinary skill would be ignorant. Accordingly, the Applicants maintain that "routine experimentation" cannot be relied upon to cure the noted deficiencies of the applied references.

CONCLUSION

In view of the above remarks and amendments, the Applicants submit that each of the pending objections and rejections have been addressed and overcome, leaving the present application in condition for allowance. A notice to that effect is requested.

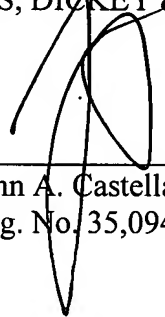
If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge any underpayment or non-payment of any fees required under 37 C.F.R. §§ 1.16 or 1.17, or credit any overpayment of such fees, to Deposit Account No. 08-0750, including, in particular, extension of time fees.

Respectfully submitted,

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By:



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